IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Arbitration Petition No. 279 of 2007

Kalpana Ishwar Modi ..Petitioner

vs.

PAN Indian Paryatan Limited ...Respondent

Mr.H.N.Thakor for petitioner.
Mr.P.Shah for respondent.

CORAM: S.C.DHARMADHIKARI J.
4th August, 2007

P.C.

1. Mentioned. Not on board.

2. This is a petition under section 9 of the Arbitration and Conciliation Act, 1996. The petitioner applies for an urgent ad-interim relief in terms of prayer clauses (a) and (b).

3. The respondent has an establishment called "Essel World". The petitioner and the respondent entered into an agreement for the purpose of providing food to the persons who would be visiting the Amusement Park which was set up by the respondent. For that purpose, an agreement has been executed between the parties, the copy of which is at page 21 (Exhibit B).

4. It is clear from the perusal of the recitals therein

that the restaurant area was earmarked by the respondent/owner in the subject park wherein food items were to be provided by the petitioner/operator.

5. The agreement very clearly stipulates that no rights are being created in favour of the petitioner other than to enter upon the area earmarked as restaurant or to put up construction for the purpose of commencing the said restaurant and use and manage it for the purpose of serving the food items therefrom.

6. Section 29 (clause 29.4) makes it abundantly clear that possession, charge and control of the restaurant area and open space is with the owner alone and the owner has merely granted the operator a limited right to operate and manage the restaurant area and open area in the manner stated in this agreement.

7. From perusal of section 29 and other relevant clauses to which my attention has been invited by Mr.Thakur, I am of the opinion, that no case is made out for any ad-interim relief with regard to the area from where the business has been carried on.

8. Admittedly, there is a termination letter received by the petitioner. As to whether the termination is in accordance with the clauses of the agreement and its

validity or otherwise are the issues which must be decided by the Arbitral Tribunal. The petitioner can very well agitate his claim of wrongful termination and urge the Tribunal to pass appropriate award in his favour if he has suffered damages on account of wrongful termination. As far as injunction sought is concerned, in the light of clear recitals in the agreement and when no right is created in favour of the petitioner, no prima facie case is made out. Further, the termination is of 19th June, 2007, The termination letter has been received on 5th July, 2007. The period stipulated in the said letter has come to an end. It is in such circumstances that there is no balance of convenience either in favour of the petitioner. The so-called plea that loss would be sustained because the materials are at site, in my view, that is an issue which can be adjudicated before the Arbitral Tribunal and the claim in that behalf is clearly quantifiable in terms of money.

9. In this view of the matter, there is no merit in the arbitration petition. Without prejudice to the rights and contentions of both sides, it is agreed that within a period of 10 days, the petitioner would remove the material from the subject area and the respondent would not obstruct the entry of the petitioner or her representatives in the said area for the purpose of taking away the material at site. For that purpose, entry/gate

pass would be renewed for a period of 10 days from today.

10. The respondent states that without prejudice to the rights and contentions of both sides and upon notifying the number of persons who are required for removing the material entry/gate passes would be issued in their name for the above period.

11. In the light of the above, arbitration petition is dismissed.

(S.C.DHARMADHIKARI J.)